BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	IB Docket No. 97-142
Rule and Policies on Foreign Participation	)	
in the U.S. Telecommunications Markets	)	

COMMENTS
OF
WINSTAR COMMUNICATIONS, INC.

Pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415 (1996), WinStar Communications, Inc. ("WinStar") hereby submits these comments on the Notice of Proposed Rule Making ("NPRM") released in the above-captioned proceeding.[1] As set forth below, WinStar's comments are limited to one issue. Specifically, WinStar supports the FCC's tentative conclusion to institute a presumption that indirect foreign ownership of common carrier radio licensees of up to 100 percent is in the public interest when the foreign investor is from a World Trade Organization ("WTO") Member country, absent compelling evidence to the contrary.[2] As a common carrier radio licensee, WinStar fully recognizes the benefits that can be realized from foreign ownership and supports efforts by the Commission to liberalize its policies to allow indirect foreign ownership by WTO Member countries.

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[1] Order and Notice of Proposed Rule Making, IB Docket No. 97-142, 62 Fed. Reg. 32966 (June 17, 1997).
[2] NPRM at ¶ 10.

Statement of Interest

WinStar is a publicly traded company whose stock is traded over the NASDAQ market system (symbol WCII). WinStar is a major license holder in the 38.6-40.0 GHz band (the "38 GHz band"). It is utilizing this spectrum asset to build wireless local telephone networks for the transmission of voice, data and video traffic throughout the United States. Over the past three years, WinStar has secured in excess of $700 million in funding for its network buildout.

WinStar is the largest holder of 38 GHz spectrum in the country, with licenses in forty-eight of the top fifty most populated metropolitan statistical areas in the United States.[3] WinStar averages 530 MHz of bandwidth in each of the top thirty markets. The company's licenses cover more than 160 major market areas in total, encompassing approximately 180 million people and more than 675 million channel pops (population coverage multiplied by the number of channels).

WinStar affiliates are authorized to provide competitive local exchange carrier ("CLEC") service, on both a facilities and resale basis, in twenty-two jurisdictions.[4] WinStar already has initiated commercial switched service as a wireless CLEC in New York, Chicago, Boston, Los Angeles and San Diego. It expects to be operating switched CLEC services in at

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[3] WinStar will have licenses in all of the top fifty markets upon completion of pending acquisitions, each of which is subject to FCC approval.

[4] California, Colorado, Connecticut, Washington, D.C., Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin.

least seven other major markets by the end of 1997. As a wireless CLEC, WinStar seeks to provide a single source for local and long distance telecommunications services to all classes of customers with quality and pricing levels comparable to those achieved by larger communications users.

WinStar also has received authority to operate as a competitive access provider ("CAP") in thirty-four jurisdictions.[5] WinStar is providing its Wireless Fiber^{SM} services to over forty carrier customers including MCI Communications, Pacific Bell, Teleport Communications and Ameritech Cellular Services. WinStar's Wireless Fiber^{SM} networks are so-named because of their ability to duplicate the technical characteristics of fiber optic cable with wireless 38 GHz microwave transmissions. These high-speed communications links have broadband characteristics, allowing for digital voice, data and video transmissions, and are engineered to have a reliability of 99.999 percent.

As detailed above, WinStar is a major common carrier radio licensee. WinStar thus has a direct interest in the FCC's consideration of its policies regarding the appropriateness of indirect foreign investment in common carrier radio licensees under Section 310(b)(4) of the Communications Act.

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[5] Arkansas, California, Colorado, Connecticut, Washington, D.C., Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington and Wisconsin.

WinStar Supports the FCC's Presumption that Indirect Foreign Ownership of Common Carrier Radio Licenses up to 100 Percent Is Consistent with the Public Interest when the Foreign Investor Is from a WTO Member Country.

In its NPRM, the Commission generally proposes to liberalize entry into the U.S. telecommunications market for most foreign-affiliated carriers consistent with the principles espoused in the WTO agreement on basic telecommunications services that takes effect on January 1, 1998. The WTO agreement essentially calls for the opening of 95 percent of the global telecommunications market to U.S. companies. In conjunction with this opportunity, the U.S. has agreed to allow foreign investors to provide a broad range of telecommunications services in the U.S. The FCC thus is revisiting its rules that presently govern the entry of foreign-affiliated carriers into the U.S. for basic telecommunications services. Of particular interest to WinStar is the FCC's proposal "to eliminate the ECO [effective competitive opportunities] test as part of our Section 310(b)(4) public interest analysis for common carrier radio licensees or applicants with foreign investment from WTO member countries."[6]

WinStar supports the FCC's conclusion that the ECO test no longer is necessary in light of the new global competitive conditions created by the WTO agreement. In addition, WinStar agrees with the FCC's proposal to simplify its review of applications for indirect foreign investment by entities from WTO Member countries in excess of 25 percent under Section 310(b)(4): "If an applicant's foreign investor has its home market in a WTO Member country, there would be a strong presumption that denial of the application would not serve

[6] NPRM at ¶ 68.

the public interest."[7] WinStar believes that these proposals are appropriate, especially since the Commission will continue to retain its discretion to consider public interest factors in determining whether to grant a common carrier application under Section 310(b)(4).

In support of its tentative conclusions, the FCC properly notes that "facilitating foreign investment in U.S. wireless markets will significantly enhance competition in these markets."[8] WinStar fully agrees with this conclusion, and notes that fixed wireless markets are included in the wireless markets referenced by the Commission. For example, the relatively nascent wireless CLEC industry is ripe for interest from both domestic and foreign investors. While WinStar has been successful in raising the necessary funds to finance the initial buildout of its multiple networks, having secured over $700 million in financing, it recognizes the difficulty often experienced in raising funds for new ventures. Consequently, WinStar welcomes the interest of foreign investors in the wireless CLEC industry. WinStar hopes that the instant proceeding will further stimulate investment in the wireless CLEC industry and accelerate long-awaited competition in the local exchange market. As the leader in wireless CLEC services, WinStar intends to fully exploit its wireless advantage to compete with incumbent, wireline, local exchange carriers to the greatest extent possible.

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[7] NPRM at ¶ 74.
[8] NPRM at ¶ 73.

WHEREFORE, THE PREMISES CONSIDERED, WinStar Communications, Inc. requests that the Commission adopt its proposals regarding indirect foreign investment in common carrier radio licenses in a manner consistent with the arguments set forth above.

Respectfully submitted,

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